

# Exhibit 22

*United States of America ex rel. Ven-a-Care of the Florida Keys, Inc v. Abbott Laboratories, Inc.; Dey, Inc., et al.; Boehringer Ingelheim Corp., et al.;*  
Civil Action No. 01-12257-PBS

Exhibit to the September 22, 2009, Declaration of George B. Henderson, II  
In Support of Plaintiff's Response to Defendants' Combined Local Rule 56.1  
Statement of Additional Material Facts Pertinent to the United States' Motions  
for Partial Summary Judgment Against Defendants

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UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

-----X MDL NO. 1456  
IN RE: PHARMACEUTICAL INDUSTRY : CIVIL ACTION:  
AVERAGE WHOLESALE PRICE LITIGATION : 01-CV-12257-PBS

-----X  
THIS DOCUMENT RELATES TO: :  
U.S. ex rel. Ven-A-Care of the : CIVIL ACTION:  
Florida Keys, Inc. v. Abbott : 06-CV-11337-PBS  
Laboratories, Inc. :  
-----X

IN THE CIRCUIT COURT OF  
MONTGOMERY COUNTY, ALABAMA

-----X  
STATE OF ALABAMA, : CASE NO.  
Plaintiff, : CV-05-219  
v. :  
ABBOTT LABORATORIES, INC., : JUDGE  
et al., : CHARLES PRICE  
Defendants. :  
-----X

Henderson Legal Services  
202-220-4158

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<p style="text-align: right;">Page 2</p> <p>1 STATE OF WISCONSIN CIRCUIT COURT DANE COUNTY</p> <p>2 -----X</p> <p>3 STATE OF WISCONSIN, : CASE NO.</p> <p>4 Plaintiff, : 04-CV-1709</p> <p>5 v. :</p> <p>6 AMGEN INC., et al., :</p> <p>7 Defendants. :</p> <p>8 -----X</p> <p>9</p> <p>10 IN THE COURT OF COMMON PLEAS</p> <p>11 FIFTH JUDICIAL CIRCUIT</p> <p>12 -----X</p> <p>13 STATE OF SOUTH CAROLINA, and : STATE OF</p> <p>14 HENRY D. McMASTER, in his official : SOUTH CAROLINA</p> <p>15 capacity as Attorney General for : COUNTY OF</p> <p>16 the State of South Carolina, : RICHLAND</p> <p>17 Plaintiff, :</p> <p>18 v. : CIVIL ACTION:</p> <p>19 MYLAN LABORATORIES, INC. : 07-CP-40-0283</p> <p>20 Defendant. :</p> <p>21 -----X</p> <p>22</p>	<p style="text-align: right;">Page 4</p> <p>1 IN THE CIRCUIT COURT OF THE CITY OF ST. LOUIS</p> <p>2 STATE OF MISSOURI</p> <p>3 -----X</p> <p>4 STATE OF MISSOURI, ex rel., :</p> <p>5 JEREMIAH W. (JAY) NIXON, :</p> <p>6 Attorney General, :</p> <p>7 and :</p> <p>8 MISSOURI DEPARTMENT OF SOCIAL :</p> <p>9 SERVICES, DIVISION OF MEDICAL : Case No.:</p> <p>10 SERVICES, : 054-1216</p> <p>11 Plaintiffs, : Division</p> <p>12 : No. 31</p> <p>13 vs. :</p> <p>14 DEY INC., DEY, L.P., MERCK KGaA, :</p> <p>15 EMD, INC., WARRICK :</p> <p>16 PHARMACEUTICALS CORPORATION, :</p> <p>17 SCHERING-PLOUGH CORPORATION, and :</p> <p>18 SCHERING CORPORATION, :</p> <p>19 Defendants. :</p> <p>20 -----X</p> <p>21</p> <p>22</p>
<p style="text-align: right;">Page 3</p> <p>1 IN THE COURT OF THE SECOND JUDICIAL CIRCUIT</p> <p>2 IN AND FOR LEON COUNTY, FLORIDA</p> <p>3 THE STATE OF FLORIDA</p> <p>4 ex rel.</p> <p>5 -----x</p> <p>6 VEN-A-CARE OF THE FLORIDA :</p> <p>7 KEYS, INC., a Florida :</p> <p>8 Corporation, by and through its :</p> <p>9 principal officers and directors, :</p> <p>10 ZACHARY T. BENTLEY and :</p> <p>11 T. MARK JONES, :</p> <p>12 Plaintiffs, :</p> <p>13 vs. : Civil Action</p> <p>14 MYLAN LABORATORIES, INC.; MYLAN : No.: 98-3032G</p> <p>15 PHARMACEUTICALS INC.; NOVOPHARM : Judge:</p> <p>16 LTD., SCHEIN PHARMACEUTICAL, INC.; : William L.</p> <p>17 TEVA PHARMACEUTICAL INDUSTRIES : Gary</p> <p>18 LTD., TEVA PHARMACEUTICAL USA; :</p> <p>19 and WATSON PHARMACEUTICALS, INC. :</p> <p>20 Defendants. :</p> <p>21 -----x</p> <p>22</p>	<p style="text-align: right;">Page 5</p> <p>1 New York, New York</p> <p>2 Friday, May 4, 2007</p> <p>3</p> <p>4</p> <p>5 Videotaped Deposition of BRUCE C.</p> <p>6 VLADECK, Ph.D., a witness herein, called for</p> <p>7 examination by counsel for Abbott Laboratories in</p> <p>8 the above-entitled matter, pursuant to Subpoena,</p> <p>9 the witness being duly sworn by JOMANNA DEROSA, a</p> <p>10 Notary Public in and for New York, taken at the</p> <p>11 offices of Jones Day, 222 East 41st Street, New</p> <p>12 York, New York, at 8:38 a.m. on Friday, May 4,</p> <p>13 2007, and the proceedings being taken down by</p> <p>14 Stenotype by JOMANNA DEROSA, and transcribed under</p> <p>15 her direction.</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p>

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<p style="text-align: right;">Page 30</p> <p>1 needs to introduce themselves for the record?</p> <p>2 MR. RORTVEDT: This is Victor Rortvedt,</p> <p>3 for Endel.</p> <p>4 THE VIDEOGRAPHER: Anybody else?</p> <p>5 MS. BROOKER: Is there anyone else new</p> <p>6 on the phone call who hasn't introduced</p> <p>7 themselves?</p> <p>8 THE VIDEOGRAPHER: Okay. Will the</p> <p>9 reporter please swear in the witness.</p> <p>10 MS. BROOKER: Well, I'm sorry.</p> <p>11 THE VIDEOGRAPHER: Oh, keep going.</p> <p>12 MS. BROOKER: A couple of matters. I</p> <p>13 just wanted to -- to make this easy for everyone.</p> <p>14 Do you want to have an agreement that if there is</p> <p>15 an objection to form or any questions at the</p> <p>16 deposition --</p> <p>17 MR. COOK: One will do.</p> <p>18 MS. BROOKER: One will do. It's</p> <p>19 preserved with respect to all others.</p> <p>20 MR. COOK: That is my first two bullet</p> <p>21 points.</p> <p>22 MS. BROOKER: Okay. The second thing</p>	<p style="text-align: right;">Page 32</p> <p>1 sent a deposition notice and subpoena for -- for</p> <p>2 Dr. Vladeck, and he appeared and -- and not only</p> <p>3 appeared, we did not send a 30(b)(6) notice to</p> <p>4 him.</p> <p>5 MS. BROOKER: Okay. Thank you.</p> <p>6 MR. AZORSKY: And also, let me speak</p> <p>7 for the record that -- I'm speaking specifically</p> <p>8 now with relation to the Florida case.</p> <p>9 Insofar as this deposition is cross-</p> <p>10 noticed in the Florida case and no documents have</p> <p>11 been produced by the defendants in that case</p> <p>12 personally to properly serve the request for</p> <p>13 production of documents, the plaintiffs in that</p> <p>14 case object to the introduction and use of any</p> <p>15 exhibits at this deposition, and reserve the</p> <p>16 right to strike any testimony based upon such</p> <p>17 exhibits as may be used in this deposition.</p> <p>18 MR. COOK: And if I could ask the</p> <p>19 Department of Justice, if this deposition needs</p> <p>20 to be retaken because of objections that are</p> <p>21 being asserted by the plaintiffs, will the</p> <p>22 government assert objections to Mr. Vladeck</p>
<p style="text-align: right;">Page 31</p> <p>1 is, do you also want to agree that if it's a form</p> <p>2 objection, it's sufficient to say "objection,</p> <p>3 form" to preserve the objection?</p> <p>4 MR. COOK: Yes.</p> <p>5 MS. BROOKER: Okay.</p> <p>6 MR. COOK: And I'll -- and I'll ask, if</p> <p>7 -- if -- if I have a question, to see whether</p> <p>8 it's curable.</p> <p>9 MS. BROOKER: Okay. One other thing I</p> <p>10 wanted to cover. I just wanted it to be very</p> <p>11 clear at the outset of the deposition, and to</p> <p>12 state on the record that Dr. Vladeck is here in</p> <p>13 his capacity as a former HCFA administrator.</p> <p>14 He's not here in his personal capacity. He is</p> <p>15 certainly not here on behalf of the agency as a</p> <p>16 corporate designee. He's not speaking on behalf</p> <p>17 of the agency, and he's not here as an expert</p> <p>18 witness to express his opinion.</p> <p>19 So, I -- I just wanted to state that at</p> <p>20 the outset.</p> <p>21 MR. COOK: Yes. I don't know what all</p> <p>22 the consequences of that are, but we certainly</p>	<p style="text-align: right;">Page 33</p> <p>1 testifying again?</p> <p>2 MS. BROOKER: We'll take it under</p> <p>3 consideration.</p> <p>4 MR. COOK: And so, there's a</p> <p>5 possibility that the plaintiffs' objection would</p> <p>6 result in Dr. Vladeck's testimony never being</p> <p>7 placed into the Florida case.</p> <p>8 MS. BROOKER: Well, I think we're</p> <p>9 premature on -- on this, but --</p> <p>10 MR. COOK: Okay.</p> <p>11 MS. BROOKER: -- we'll -- we'll --</p> <p>12 we'll consider that.</p> <p>13 Chris, did you have anything else</p> <p>14 before we start?</p> <p>15 MR. COOK: No.</p> <p>16 MS. BROOKER: I think we can swear the</p> <p>17 witness.</p> <p>18 THE VIDEOGRAPHER: Just -- just -- just</p> <p>19 a reminder to people on the conference phone, now</p> <p>20 that we finished introductions, please put your</p> <p>21 phones on mute.</p> <p>22</p>

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<p>1 A. No.</p> <p>2 Q. You'll notice that in 1989, one of your</p> <p>3 predecessors, Acting Administrator Hays, referred</p> <p>4 to average wholesale price as a sticker price, as</p> <p>5 did Secretary Shalala in 1997, and President</p> <p>6 Clinton again in 1997.</p> <p>7 While you were administrator of HCFA</p> <p>8 between 1993 and 1997, did you understand average</p> <p>9 wholesale price to be the sticker price for</p> <p>10 drugs?</p> <p>11 MS. BROOKER: Objection. Form.</p> <p>12 A. That would have been one of the</p> <p>13 metaphors or analogies we used to describe it,</p> <p>14 yes.</p> <p>15 Q. Turning to Exhibit Abbott 156, the</p> <p>16 radio address by President Clinton, is there any</p> <p>17 aspect of President Clinton's statement that I've</p> <p>18 read into the record with which you disagree?</p> <p>19 MR. BREEN: Objection. Form.</p> <p>20 MS. BROOKER: Objection. Form.</p> <p>21 A. The -- had I been engaged in the</p> <p>22 process of preparing this speech or whatever, the</p>	<p>1 A. No. I would -- I would say that most</p> <p>2 of my focus in that period of time was on brand</p> <p>3 name drugs, that the issues we were most</p> <p>4 concerned about, in terms of Medicare drug</p> <p>5 payments and drug policies primarily involved</p> <p>6 brand name drugs.</p> <p>7 And out of naivete, or for whatever</p> <p>8 reason, I believe that the -- the market for</p> <p>9 generic was more truly competitive in that</p> <p>10 transaction prices in the market were probably</p> <p>11 more constrained or limited than they were for --</p> <p>12 for brand name drugs.</p> <p>13 Q. How do you mean that the prices in the</p> <p>14 marketplace would be constrained or limited for</p> <p>15 generics?</p> <p>16 A. Just in the sense of classic economic</p> <p>17 theory, in which a patent creates a monopoly</p> <p>18 pricing power on the part of the patent holder</p> <p>19 that essentially permits substantially greater</p> <p>20 latitude or discretion in setting the price.</p> <p>21 Whereas a product that has identical competitors</p> <p>22 in the market, producers, would have less freedom</p>
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<p>1 sentence on the -- that concludes the paragraph</p> <p>2 carrying over on to Page 2, "in fact, some pay</p> <p>3 just one-tenth of the published price," I would</p> <p>4 have raised concerns about because I would not</p> <p>5 have been aware, at the time, of any gap between</p> <p>6 actual acquisition cost and AWP and the compendia</p> <p>7 of -- of that magnitude.</p> <p>8 Q. So, it's your recollection that as of</p> <p>9 December 1997, you personally were not aware of a</p> <p>10 gap of one to ten between provider acquisition</p> <p>11 cost and published average wholesale price?</p> <p>12 A. That's correct. My understanding at</p> <p>13 the time was that there was not a constant, but a</p> <p>14 pretty systematic spread of the kind one might</p> <p>15 find in the apparel or automobile industries</p> <p>16 between sticker or list price and the price to</p> <p>17 the -- the final seller.</p> <p>18 Q. And when you described your</p> <p>19 understanding of the difference between</p> <p>20 acquisition cost and published average wholesale</p> <p>21 prices, did you distinguish, in your mind, in</p> <p>22 1997, between brand name drugs and generic drugs?</p>	<p>1 to unilaterally change their price or certainly</p> <p>2 to unilaterally raise their prices.</p> <p>3 Q. So, let's step back and address first</p> <p>4 brand name drugs, and then -- and then generic</p> <p>5 drugs.</p> <p>6 What was your understanding, in 1997,</p> <p>7 of the relationship between published average</p> <p>8 wholesale price and prices within the marketplace</p> <p>9 for brand name drugs?</p> <p>10 MS. BROOKER: Objection. Form.</p> <p>11 A. My understanding, which I think is</p> <p>12 consistent with, for example, the Secretary's</p> <p>13 response in the exhibit we just discussed a few</p> <p>14 minutes ago, is that average wholesale price was</p> <p>15 an -- almost literally, a list price. That is to</p> <p>16 say, a price prepared for public consumption and</p> <p>17 public dissemination by the manufacturers, and</p> <p>18 that their general industry practice meant that</p> <p>19 the manufacturers actually provided that product</p> <p>20 to the pharmacist or physicians, whoever was</p> <p>21 selling it, at some discount, which we estimated</p> <p>22 averaged between 15 and 20 percent.</p>

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<p>1 MS. BROOKER: Objection. Form.</p> <p>2 MR. COOK: That's a bad question. I can</p> <p>3 ask a better question.</p> <p>4 Q. What did you mean when you said that</p> <p>5 you understood that there was, on average, a</p> <p>6 percentage difference between AWP and the price</p> <p>7 to providers?</p> <p>8 A. Again, I would have been very much</p> <p>9 influenced by my perception of the relationship</p> <p>10 of sticker price to transaction prices in other</p> <p>11 sectors or other industries. And, again, it was</p> <p>12 my belief that, on average, the actual</p> <p>13 acquisition price for brand drugs was somewhere</p> <p>14 in the range of 15 percent below average</p> <p>15 wholesale price, as we understood it, but that,</p> <p>16 again, the buyers or the providers with the least</p> <p>17 market power were probably paying amounts closest</p> <p>18 to the average wholesale price, and that the most</p> <p>19 powerful purchasers might well be paying less</p> <p>20 than 85 percent or so of the -- of the average</p> <p>21 wholesale price.</p> <p>22 Q. And so, your understanding, do I have</p>	<p>1 MS. BROOKER: Objection. Form.</p> <p>2 A. Absolutely.</p> <p>3 Q. And so, it would certainly be possible</p> <p>4 that for one drug there would be a different</p> <p>5 variation in a different range of market prices</p> <p>6 than for another drug.</p> <p>7 Right?</p> <p>8 MR. BREEN: Objection. Form.</p> <p>9 A. Again, to the extent I was -- you know,</p> <p>10 I was thinking about these issues in this detail,</p> <p>11 I would say that at the time, my perception was</p> <p>12 there was a pretty standard relationship between</p> <p>13 AWP and average prices in the market. I could</p> <p>14 have -- had you posed that question then, I</p> <p>15 probably could have envisioned particular drugs</p> <p>16 that might have been different, but that was not</p> <p>17 how I understood the issue at the time, I don't</p> <p>18 believe.</p> <p>19 Q. And, again, we're talking about brand</p> <p>20 name drugs. Correct?</p> <p>21 A. That's correct.</p> <p>22 MR. COOK: I'd like to show you a</p>
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<p>1 it correct, is that for a single drug, there</p> <p>2 would be variation among providers in their</p> <p>3 acquisition cost. Correct?</p> <p>4 MS. BROOKER: Objection. Form.</p> <p>5 A. That is correct.</p> <p>6 Q. Was it your understanding also that for</p> <p>7 different drugs, the variations between</p> <p>8 acquisition cost and AWP wouldn't necessarily be</p> <p>9 the same?</p> <p>10 MS. BROOKER: Objection. Form.</p> <p>11 A. I think my perception was -- and,</p> <p>12 again, to the extent I spent a lot of time</p> <p>13 thinking about it or whatever, that the -- the</p> <p>14 differential between average market price or</p> <p>15 average acquisition price on the one hand and</p> <p>16 average wholesale price on the other was probably</p> <p>17 pretty standard, pretty constant, pretty uniform</p> <p>18 across drugs would have been my understanding at</p> <p>19 the time.</p> <p>20 Q. But you would agree with me that</p> <p>21 different drugs might have different markets and</p> <p>22 different purchasers?</p>	<p>1 couple of OIG reports that may be among the ones</p> <p>2 you've seen already.</p> <p>3 The first comes from 1992, just before</p> <p>4 you were administrator of -- of HCFA. It's been</p> <p>5 marked in the past as Exhibit Abbott 082.</p> <p>6 And for the record, this is a report,</p> <p>7 with an accompanying cover memo, dated October</p> <p>8 20, 1992. It's from Bryan B. Mitchell, Principal</p> <p>9 Deputy Inspector General to William Toby, Jr.,</p> <p>10 who was the acting administrator of HCFA.</p> <p>11 Do I recall correctly that William Toby</p> <p>12 immediately preceded you as the acting</p> <p>13 administrator of HCFA?</p> <p>14 A. That is correct.</p> <p>15 Q. The subject, as described on the cover</p> <p>16 page, the third page of the exhibit you have, is</p> <p>17 "Cost of Dialysis Related Drugs" and indicates a</p> <p>18 date of October 1992.</p> <p>19 Do you recall ever seeing this report</p> <p>20 before, Dr. Vladeck?</p> <p>21 A. I don't believe I have.</p> <p>22 Q. This would have been before your time.</p>

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